IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS WESTERN DIVISION

KRISTIN MADDOX PLAINTIFF

v. NO. 4:00CV00135 HW

AMERICAN AIRLINES, INC. DEFENDANT

ORDER

PlaintiffPlaintiff Kristin Maddox (Maddox) has filed a motion Plaintiff Kristin Maddox (Maddox) has filed a motionment 72. Defendant American Airlines, Inc., (American) has also filed a motionmotion to alter or amend the judgment. See Document 74. Document 74. The Document 74. motions and finds that they should be, and are, granted in part and denied in part.

Itlt is undist is undisputelt is undisputed that on August 28, 2000, the Court, on the basis verdict, verdict, entered judgment for Maddox in the amount of alsoalso containedalso contained the following provision: This judgment shallalso contained the following provision: This judgment shallalso contained the following provision: See Document 74, Exhibit 1. legal legal rate of 6.375% as provided by law until paid. See Document 74, Exhibit 1. legal judgment judgment did not contain an award of pre-judgment judgment did not contain an award of toto American in an amount equal to the special drawingto American

FollowingFollowing the entry of judgment, Maddox Following the entry of judgment, Madmotion, she asked that the judgment be amended in the following respects:

(a)(a) that, in(a) that, in accordance(a) that, in accordance with Oklahoma law, prejudgment in toto her damage award; (b) thatto her damage award; (b) that certain sums heretofore paid by bebe deducted from her damage awabe deducted from her damage award; abe deducted post-judgmentpost-judgment interest atpost-judgment interest at the ratepost-judgment interest until paid.

<u>See</u> Document 72 at 1. American thereafter f Document 72 at 1. American thereafter filed its judgment.judgment. American, judgment. American, in its motion, asked that the judgment bejudg SDRSDR payment made to Maddox. American specifically alleged the SDR payment made to Maddox. A

AtAt the hearing conductedAt the hearing conducted immediately prior to the beginning in this matter, the Court ruled fromin this matter, the Court ruled from the bench that their bebe given a creditbe given a credit against any Judgment in an amount equal tobe given a c drawingdrawing rights (SDR) payment made to the Plaintiff pursuant to the terms of the Warsaw Convention Treaty.

The present Judgment ... does not reflect this SDR credit.

DocumentationDocumentation of the SDR credit in the amount of One Documentation ThirtyThirty FourThirty Four Thousand Four HundredThirty Four Thousand Four Hundred Fifty admitted admitted into evidence as Plaintiff's Exadmitted into evidence as Plaintiff's Exhowever, However, consistent with theHowever, consistent with the CourHowever, consistent available to the jury. ...

InIn light of this Court's ruling that the SDR payment woln light of this Court's creditecreditedcredited against any Judgment rendered against the Defendant and the factfact that the presentfact that the present Judgment does not reflect said credit, the Defendances moves moves the Court to alter or amoves the Court to alter or \$134,453.00.

<u>See</u> Document Document 74 at 1-2. American also submitted Document 74 at 1-2. American also submitted by Maddox. Its response was two-fold. First, although American ack Oklahoma law provides for pre-judgment interest, Oklahoma law provides for pre-judgment interest notnot binding on the Court. Second, American tooknot binding on the Court. Second, American took thethe proper post-judgment interest rate, i.e., the federal rate of post-judgment interest.

TurningTurning to Turning to the matters addressed in the motions, the Court finds that two of threethree matters are easily resolved. First, the Court previothree matters are easily resolved parties parties agree, that American is entitled to a credit parties agree, that American is entitled to a amount amount of \$134,453.00. American is also entitled to a credit equal to the SDRSDR payment, that being, \$4,051.93. The judgment will be so amended, SDR payment, that being, \$4,051.93. The judgment will be reduced to \$10,876,495.07. Maddox s motion to is granted in this one respect; American s motion to alter or amend is granted.

Second, Second, with respect to the rate of post-judgment interest, the Court will not applyapply the Oklahoma rateapply the Oklahoma rate but will instead apply theapply the Oklahoma thethe Eighth Circuit is that federal law 28 U.S.C. 1961(a)--governs athe Eighth Circuit is that judgmentjudgment interest in a case arising out of federaljudgment interest in a case arising out of federaljudgmen

The The amended amount of \$10,876,495.07 is arrived at by subtractin The amended amount of \$10,876,495.07 is arrived at 4,051.93 (the interest on the SDR payment) from \$11,015,000.00.

TheThe matter of pre-judgmentThe matter of pre-judgment interest is not as easily resolved. matter, thematter, the Court is guided by the United States Supreme Court decision v.v. Korean Airlines Co., 516 U.S. 217 (1996). It provides ., 516 U.S. 217 (1996). It provides that WarsawWarsaw Convention, the specification of what damages are legallyWarsaw Convention, the statement of the thematical terms are the second to the convention of the Warsaw Convention was inapplicable.

Maddox, Maddox, a residentMaddox, a resident of Oklahoma, commenced the case at bar inMaddox, toto the provisions of the Warsaw Convention. Thus, Ato to the The Arkansas choice-of-law rules require the applicationThe Arkansas choice-of-law rules require the the relevant law would be characterized as substantive rather the relevant law would be characterized as substantive rather the relevant law would be characterized as a substantive rather the relevant law would be characterized as a substantive rather the relevant law would be characterized as subst

The proper partition parties in the case at bar agreed that Oklahoma law would be applied accordance accordance with that agreement, the Couraccordance with t

The measure of The measure of damageThe measure of damage is typically treated as a substance of A.A. Leflar, American Conflicts Law, section 126 (4th ed. 1986), proposition proposition that pre-judgment interest is an element of damage awarded toproposition the compensation by converting time-of-demand damage into time-of-verdictcompensation SimeoneSimeone v. First Bank National Association, 73 F.3d 184 (, 73 F.3d 184 (8th Cir. 19 Cir. hhowever, however, does not so construe its pre-judgment interest statute. First, the Oklahohower SupremeSupreme CoSupreme Court construes the statute as a procedural matter and not a sub matter.matter. See Fields v. Volkswagen of America, Inc., 555 P.2d 48 (Okla. 1976); Benson v. Blair, 515 P.2d 1363 (Okla. 1973). Second, the Oklahoma Su, 515 P.2d 1363 (Okla. 1973). Secondiderconsider interest to be an element of damage inconsider interest to be an element of damage v.v. Baptist General Convention of Oklahoma, 742, 742 P.2d 1087 (Okstate Supreme Court provided the following:

InterestInterest is not an element of damages in a personal injury action. [Citations[Citations omitted]. The[Citations omitted]. The fact that interest is not an element underunder Oklahoma law is dunder Oklahoma law is discoverunder Oklahoma la

<u>See Id.</u> . 1096. Although the Court is not bound by the construction given the prejudgmentjudgment statute by the Oklahoma Supreme Court, <u>see Doan v. Consumer TeDoan v.</u> <u>Laboratories, Laboratories, Inc.</u>, 2, 2 F.Supp. at 1213, the manner in, 2 F.Supp. at 1213, the manner in value highest court of Oklahoma is entitled to considerable weight. It is also at least worth noting that pre-judgment interest wouldnoting that pre-judgment interest would not be available in beenbeen tried in accordance with Arkansas law. <u>See Woodline Motor Freight v. Troutman OilOil Company, Inc.</u>, 327 Ark. 448, 938 S.W.2d 565 (1997).² Because the Oklahoma pre-judgment interest statute is procedural, it will not be followed. Maddox s motion to amend is denied in this respect.

Inlin summary, Malin summary, Maddox sin summary, Maddox s motion to amend is granted motionmotion to altermotion to alter or amend is granted. The judgment will be amendedmotion to paymentpayment to Maddox and payment to Maddox and interest on payment to Maddox and interest judgmentjudgment will be reduced to judgment will be reduced to \$10,876,495.07. Maddox s motion otherother respects. The Court will apply the federal ratother respects. The Court will apply the August 28, 2000; August 28, 2000; theAugust 28, 2000; the Court will not apply the Oklahoma part of the Court will specific the Court will not apply the Oklahoma part of the Court will not apply t

HENRY WOODS, U. S. District Judge

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IlnIn that case, the Arkansas Supreme Court noted that the award of pre-judgment in In that case, the Arkansa dependentdependent upon whether the action is in contract or independent upon whether the action is in contract or in too amountamount of damages is definitely ascertainable by mathematical computation, amount of damages is definitely ascertainable that makes it possible to compute the amount date that makes it possible to compute the amount without reliance S.W.2d at 568.